

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**

**MAR 13 2014**

CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_  
Deputy

ALLEN F. CALTON,

Plaintiff,

VS.

STEVE SCHILLER, ET AL.,

Defendants.

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NO. 4:14-CV-115-A

O R D E R

Plaintiff, Allen F. Calton, filed the instant petition pursuant to 42 U.S.C. § 1983 on February 18, 2014, naming as defendants Steve Schiller, in his individual and official capacities, Sharon Keller in her official capacity, and John Cayce in his official capacity. Plaintiff also filed an application to proceed in forma pauperis in this action. On February 21, 2014, the United States Magistrate Judge issued his findings, conclusions, and recommendation ("FC&R"). In the FC&R, the magistrate judge found that plaintiff has had multiple cases dismissed as frivolous and is thus barred from proceeding in forma pauperis pursuant to 28 U.S.C. § 1915(g). The FC&R recommended that plaintiff's motion to proceed in forma pauperis be denied, and that plaintiff be ordered to pay the full filing fee and administrative fees of \$400.00 within seven days following the court's ruling on the motion for in forma pauperis,

or face dismissal of the action without further notice for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.<sup>1</sup>

Plaintiff on March 12, 2014, filed his objections to the FC&R. Relying on Carson v. Johnson, 112 F.3d 818 (5th Cir. 1997), plaintiff contended that he has a fundamental interest at stake in the instant action, with the consequence that Carson required the magistrate judge to conduct a strict scrutiny analysis before issuing the FC&R. Plaintiff then objected to the magistrate judge's failure to do so.

In accordance with 28 U.S.C. § 636(b) (1) and Rule 72 of the Federal Rules of Civil Procedure, the court makes a de novo determination of the magistrate judge's order to which specific objection is made. United States v. Raddatz, 447 U.S. 667, 673-75 (1980). The court concludes that the objections are without merit, as nothing in Carson requires the court to conduct a strict scrutiny analysis of plaintiff's claims prior to determining if he is entitled to proceed in forma pauperis in an action. The court therefore overrules plaintiff's objections and accepts the magistrate judge's recommendation to deny plaintiff's

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<sup>1</sup>Rule 41(b) contemplates that a dismissal under it will be on motion of a defendant. However, the court has inherent authority to dismiss, sua sponte, an action for want of prosecution. See Link v. Wabash R.R. Co., 370 U.S. 626, 630 (1962); Jones v. Caddo Parish Sch. Bd., 704 F.2d 206, 214 (5th Cir. 1983).

motion to proceed in forma pauperis in this action and the requirement for plaintiff to pay the full filing fee within seven days.

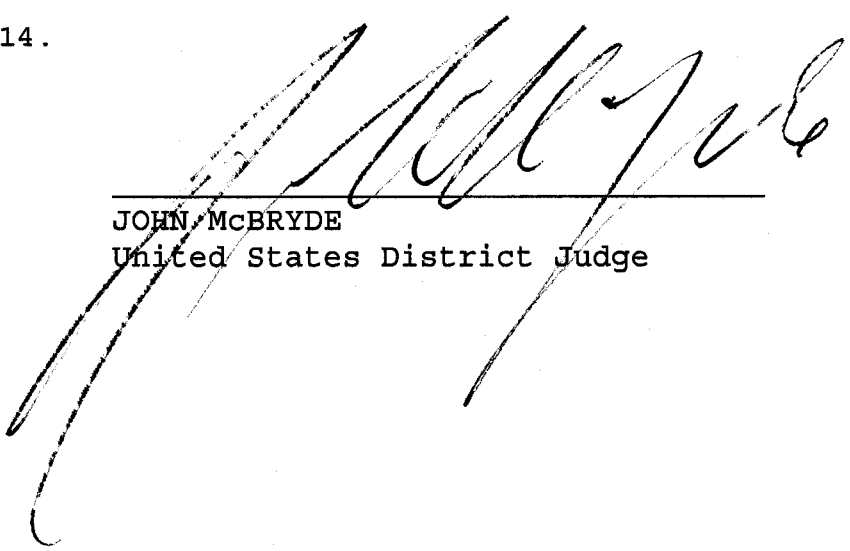
Therefore,

The court ORDERS that plaintiff's objections be, and are hereby, overruled.

The court further ORDERS that by 4:00 p.m. on March 20, 2014, plaintiff pay to the Clerk of the court the full filing and administrative fees of \$400.00.

The court further ORDERS that failure of plaintiff to comply with the terms of this order may result in the dismissal of this action without further notice as a sanction or pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

SIGNED March 13, 2014.



JOHN MCBRYDE  
United States District Judge